MONTANA LEGISLATIVE HISTORY

Chapter 269 19 95

Bill H 454 S _____ Original bill & history ✓ C

H. Committee on Business + Labor			S. Committee on Business + Ind.		
Hearing Date(s)	2-13	✓ C	Hearing Date(s)	3-10	✓ C
	2-17	✓ C		[illegible]	C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HB 455 INTRODUCED BY BERGMAN, ET AL.

SPECIFY PROVISIONS FOR AN ORDINANCE REGULATING NOTIFICATION OF AQUATIC HERBICIDE APPLICATION

2/07	INTRODUCED		
2/07	FIRST READING		
2/07	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/14	HEARING		
2/14	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE		
	DIED IN COMMITTEE		

HB 454 INTRODUCED BY HARPER

REVISE AND UPDATE THE UNIFORM TRADE SECRETS ACT

2/07	INTRODUCED		
2/07	FIRST READING		
2/07	REFERRED TO BUSINESS & LABOR		
2/13	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED		
2/18	2ND READING PASSED	98	0
2/20	3RD READING PASSED	99	0
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO BUSINESS & INDUSTRY		
3/07	HEARING		
3/10	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/16	2ND READING CONCURRED	50	0
3/17	3RD READING CONCURRED	46	0
	RETURNED TO HOUSE		
3/20	SIGNED BY SPEAKER		
3/22	SIGNED BY PRESIDENT		
3/23	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 269		
	EFFECTIVE DATE: 10/01/95		

HB 455 INTRODUCED BY BERGMAN, ET AL.

PROVIDE THAT IF A CANDIDATE FOR SUPERVISOR OF A CONSERVATION DISTRICT IS UNOPPOSED, THE DISTRICT'S GOVERNING BODY MAY, WITHOUT AN ELECTION, DECLARE THE CANDIDATE ELECTED BY ACCLAMATION

2/07	INTRODUCED		
2/07	FIRST READING		
2/07	REFERRED TO STATE ADMINISTRATION		
2/13	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	2ND READING PASSED	50	49
2/18	3RD READING PASSED	65	33
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO STATE ADMINISTRATION		
3/03	HEARING		
3/04	COMMITTEE REPORT—BILL CONCURRED		
3/08	2ND READING CONCURRED	48	0
3/09	3RD READING CONCURRED	47	0
	RETURNED TO HOUSE		
3/11	SIGNED BY SPEAKER		

House BILL NO. 454

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND UPDATING THE UNIFORM TRADE SECRETS ACT; REVISING INJUNCTIVE RELIEF IN EXCEPTIONAL CIRCUMSTANCES; REVISING THE CIRCUMSTANCES FOR THE RECOVERY OF DAMAGES; CLARIFYING THE IMPACT ON OTHER LAW; AMENDING SECTIONS 30-14-403, 30-14-404, AND 30-14-408, MCA; AND PROVIDING AN APPLICABILITY PROVISION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-14-403, MCA, is amended to read:

"**30-14-403. Injunctive relief -- royalty.** (1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction must be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) ~~If the court determines that it would be unreasonable to prohibit future use~~ In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time ~~the~~ for which use could have been prohibited. Exceptional circumstances include but are not limited to a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order."

Section 2. Section 30-14-404, MCA, is amended to read:

"**30-14-404. Damages.** (1) ~~In addition to or in lieu of injunctive relief~~ Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant ~~may~~ is entitled to recover damages for ~~the actual loss caused by~~ misappropriation. ~~A complainant also may recover for~~ Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that

is not taken into account in computing ~~damages for~~ actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized use of a trade secret.

(2) If willful and malicious misappropriation exists, the court may award exemplary damages."

Section 3. Section 30-14-408, MCA, is amended to read:

"**30-14-408. Effect on other law.** (1) ~~This~~ Except as provided in subsection (2), this part displaces conflicting tort, restitutionary, and other law of this state ~~pertaining to~~ providing civil ~~liability~~ remedies for misappropriation of a trade secret.

(2) This part does not affect:

(a) contractual ~~or other civil liability or relief that is~~ remedies, whether or not based upon misappropriation of a trade secret; ~~or~~

(b) ~~criminal liability for~~ other civil remedies that are not based upon misappropriation of a trade secret; or

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NEW SECTION. **Section 4. Applicability.** With respect to a continuing misappropriation that began prior to [the effective date of this act], [this act] does not apply to the continuing misappropriation that occurs after [the effective date of this act].

-END-

APPROVED BY COMMITTEE
ON BUSINESS AND LABOR

House BILL NO. 454

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND UPDATING THE UNIFORM TRADE SECRETS ACT; REVISING INJUNCTIVE RELIEF IN EXCEPTIONAL CIRCUMSTANCES; REVISING THE CIRCUMSTANCES FOR THE RECOVERY OF DAMAGES; CLARIFYING THE IMPACT ON OTHER LAW; AMENDING SECTIONS 30-14-403, 30-14-404, AND 30-14-408, MCA; AND PROVIDING AN APPLICABILITY PROVISION."

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COURTESY OF THE STATE LAW LIBRARY OF MONTANA
HB 454
SECOND READING

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COURTESY OF THE STATE LAW LIBRARY OF GEORGIA

HB 454
THIRD READING

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HOUSE BILL NO. 454

INTRODUCED BY HARPER

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COURTESY OF THE STATE LAW LIBRARY OF MONTANA

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-END-

- BILL NO. - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE -----
-- RERREFERRED ---- DATE READ

HB0419	MCCULLOCH, LINDA		REVISE LANDLORD AND TENANT LAW				
	2/03	2/09		TABLED ON 2/13	VOTE: 13-5		
HB0426	RANEY, BOB		LONG-TERM PLANNING FOR MONTANA				
	2/03	2/09		TABLED ON 2/14	VOTE: 18-0		
HB0428	EWER, DAVID		REVISE BANKING LAWS REGARDING MERGERS, BRANCHES, ELECTRONIC FUNDS TRANSFER				
	2/04	2/09		PASS AS AMENDED 2/13	VOTE: 17-1		2/15
HB0432	WISEMAN, WILLIAM		TRANSFER FIRE AND BOILER SAFETY & INSPECTION FUNCTIONS TO DEPT OF COMMERCE				
	2/04	2/10		PASS AS AMENDED 2/13	VOTE: 15-3		2/15
HB0454	HARPER, HAL		REVISE UNIFORM TRADE SECRETS ACT				
	2/07	2/13		DO PASS 2/17	VOTE: 18-0		2/17
HB0458	LARSON, DON		EXEMPT LOCAL GOVTS FROM CERT OF PUBLIC CONVENIENCE FOR HAUL/CONTRACT GARBAGE				
	2/07	2/17		TABLED ON 2/17	VOTE: 15-3		
HB0460	QUILICI, JOE		ESTABLISH TASK FORCE TO EXAMINE TELECOMMUNICATIONS ISSUES AND PROSPECTS				
	2/07	2/13		DO PASS 2/13	VOTE: 17-1	APPROPRIATIONS	2/15
HB0462	EWER, DAVID		REVISE VOLUNTEER STATUS UNDER WORK COMP AND ALLOW FUND MONEY IN COMMON STOCK				
	2/07	2/13		PASS AS AMENDED 2/13	VOTE: 18-0		2/15
HB0463	EWER, DAVID		CONSTITUTIONAL AMENDMENT; ALLOW STATE FUND MONEY TO BE INVESTED IN EQUITIES				
	2/07	2/13		DO PASS 2/13	VOTE: 18-0		2/15
HB0475	FORBES, ROSE		CREATE % ON TRUST FUND PLAN RUN BY MONTANA LAND TITLE ASSOC FOUNDATION				
	2/08	2/14		PASS AS AMENDED 2/14	VOTE: 16-2		2/15
HB0477	SCHWINDEN, DORE		EXPAND RESERVATION GAMING WITH 8% OF REVENUE TO FUND LOCAL GOVERNMENT				
	2/08	2/14		TABLED ON 2/14	VOTE: 12-6		
	HURDLE, JOAN		REPEAL THE MONTANA RETAIL MOTOR FUEL MARKETING ACT				

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on February 13, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 454, HB 537, HB 460, HB 462, HB 463,
Executive Action: HB 458, HB 460, HB 463, HB 462, HB 428, HB 408, HB 241 HB 269, HB 419

HEARING ON HB 454

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, Lewis and Clark County said this bill was an act revising and updated the Uniform Trade Secrets Act;

revising injunctive relief in exceptional circumstances; revising the circumstances for the recovery of damages and clarifying the impact on other law.

Proponents' Testimony:

Joe Mazurek, Attorney General, Department of Justice said the goal of the association is to try to devise uniform laws among the states which will be desirable. States desire to have consistent statutes where needed.

Opponents' Testimony:

None.

Closing by Sponsor:

The sponsor closed.

EXECUTIVE ACTION ON HB 458

Motion/Vote: REP. CARLEY TUSS MOVED HB 458 DO PASS. Motion carried 18-0.

HEARING ON HB 537

Opening Statement by Sponsor:

REP. DON LARSON, HD 58, Flathead County stated this bill was an act prohibiting establishments that have a commonality of interests and the maximum allowable number of video gaming machines from being within 150 feet of each other. **EXHIBIT 1**

Proponents' Testimony:

Mark Staples, Montana Tavern Association said the Association tried to stop the stacking of licenses in 1991. Even though the limit was 20 machines, people would just buy another license and own 20 more machines. At that time they were putting these machines in the same room. The Department of Justice and everyone else in the state realized that was outside the intent and was also creating a need for a new class of licenses because it was escalating the price of licenses so much. All of this was very damaging to the licensing system. In 1991, the anti-stacking bill was put through that said the premises must be separated. Those people who had 40 machines in one room were grandfathered for five years to recoup the investment. He then explained the changes in the bill.

Joe Mazurek, Attorney General, Department of Justice said his department regulated the gambling in the state. The state became a part of the gambling business in 1989. The location of gaming

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL DATE 2-13-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on February 17, 1995, at 9:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Charles R. Devaney (R)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: Rep. Vicki Cocchiarella
Rep. Jon Ellingson

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 458
Executive Action: HB 454, HB 458

EXECUTIVE ACTION ON HB 454

Motion/Vote: **REP. BOB PAVLOVICH MOVED HB 454 DO PASS. Motion carried 18-0.**

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL DATE 2-17-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella		X	
Rep. Charles Devaney	X		
Rep. Jon Ellingson		X	
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 454** (first reading copy -- white) **do pass**.

Signed: *Bruce Simon, Chair*

Committee Vote:
Yes 18, No 0.

411021SC.Hbk

SENATE BUSINESS & INDUSTRY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0408	SLITER, PAUL 2/21	3/07		STATE PYMT OF FEES OF SMALL BUSINESS PREVAILING OVER STATE IN PROCEEDING CONCUR 3/08 VOTE: UNAN		3/09
HB0409	BARNETT, JOE 2/20	3/16		REVISE BANKING LAWS CONCERNING DETACHED FACILITIES CONCUR 3/16 VOTE: UNAN		3/17
HB0428	EWER, DAVID 2/21	3/09		REVISE BANKING LAWS REGARDING MERGERS, BRANCHES, ELECTRONIC FUNDS TRANSFER CONCUR 3/14 VOTE: UNAN		3/15
HB0432	WISEMAN, WILLIAM 2/21			TRANSFER FIRE AND BOILER SAFETY & INSPECTION FUNCTIONS TO DEPT OF COMMERCE VOTE:	LABOR & EMPLOYMENT	
HB0446	ORR, SCOTT 2/27			REVISE PREEXISTING CONDITION LAW VOTE:	JC/HEALTH CARE	
HB0454	HARPER, HAL 2/21	3/10		REVISE UNIFORM TRADE SECRETS ACT CONCUR 3/10 VOTE: UNAN		3/10
HB0466	NELSON, THOMAS 2/27			AMEND SMALL EMPLOYER HEALTH CARE AVAILABILITY ACT VOTE:	JC/HEALTH CARE	
HB0475	FORBES, ROSE 2/21	3/09		CREATE % ON TRUST FUND PLAN RUN BY MONTANA LAND TITLE ASSOC FOUNDATION CONCUR 3/09 VOTE: UNAN		3/10
HB0488	TUSS, CARLEY 2/21	3/15	3/17	PROHIBIT INS. CO. REFUSING TO INSURE AUTO OR HOME DUE TO CREDIT HISTORY CONCUR AS AMENDED 3/22 VOTE: UNAN		3/23
HB0502	COCCHIARELLA, VICKI 2/21	3/02		CLARIFY PROVISIONS TO THE RADON CONTROL ACT CONCUR 3/02 VOTE: UNAN		3/03
HB0518	TUSS, CARLEY 2/21	3/14		UNIFORM PROCEDURE FOR OPERATION OF OCCUPATIONAL LICENSING BOARDS CONCUR AS AMENDED 3/22 VOTE: 7-2		3/23
HB0527	LARSON, DON 2/21	3/03		CHANGE VIDEO DRAW POKER MACHINE MAXIMUM PAYOUT CONCUR 3/03 VOTE: 8-1		3/04

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 10, 1995, at 10:00 a.m.

ROLL CALL

Members Present:
Sen. John R. Hertel, Chairman (R)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Terry Klampe (D)
Sen. Bill Wilson (D)

Members Excused: Sen. Steve Benedict (R) and Sen. Ken Miller (R)

Members Absent: N/A

Staff Present: Bart Campbell, Legislative Council
Lynette Lavin, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 454
Executive Action: HB 454 BE CONCURRED IN

HEARING ON HB 454

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, Helena, stated he had carried the bill in 1985, at the behest of local soft-ware developers and producers who wanted the same protection in the State of Montana that most the other states had. If a soft-ware program was developed in the state, before the Act was passed, someone could "rip it off", so they wanted to make sure that Montana was as safe a haven as other states for those high tech, high paid jobs that were coming into the state. Since that time, two of the most important bodies that dealt with those laws had decided that some amendments were necessary; the patent trademark and copyright section of the American Bar Association and the American Patent Law Association, both of which had identical resolutions urging amendments to that particular Act and what they did was take

their amendments verbatim and put them in the bills. That was suggested by the National Commission on Uniform State Laws, of which our **Attorney General, Joe Mazurek,** was a member. **Attorney General Mazurek** had intended to be at this hearing; however, he had another hearing to attend. He was the only proponent to testify before the House Committee on first reading and HB 454 passed unanimously at that hearing.

REP. HARPER explained this bill was revising and updating the Uniform Trade Secrets Act. Section 1, page 1, In exceptional circumstances (key words) and that phrase is complicated. There was a balance between public interest, or trade secrets, or misappropriated, but served a public interest function; not necessarily willfully misappropriated. **REP. HARPER** gave an example of a weapons design system which borrowed (stolen, or whatever it would be called) some trade secrets, but since that weapon system was necessary to protect American soldiers in Viet Nam, there were some mitigating circumstances. In other words, the court didn't go in and jerk that development of the weapons system out, saying it was misappropriated, because there was public interest served by that particular weapon system. That is one type of case "exceptional circumstances" applied to. Those were extremely technical terms.

REP. HARPER stated he was not an attorney, but he would try to do his best in the absence of **Attorney General Mazurek.** Further in that section, the intent of the underlined language was to limit the injunctive relief to the extent of the temporal advantage over good faith that competitors gain by misappropriation. Basically what that meant was if **SEN. CRISMORE** misappropriated an idea and was being penalized by the inventor or patentor of the idea, his liability would be limited because in a years time, he also could have discovered and been able to use that invention or that advantage. That was what the first section accomplished.

REP. HARPER stated the second section applied to damages and "misappropriation" was the key word. The affect of those amendments was to make the measurement of damages explicit; once again, very technical. On the second page, further on in section 2, the key phrase on line 3 was "reasonable royalty" and in that case they were talking about a measure of damages for prior misappropriation where greater actual loss or unjust enrichment could not be proved. Section 3 referred to remedies for breach of contract and stated they should not be displaced by that trade secrets law. Section 4 was an applicability date and the language there was necessary because that was a short term transitional problem and the affect of that section was to say prior laws govern any action that began before the effective date of that act.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

SEN. CASEY EMERSON stated he had been very closely connected with the patent idea and trademarks, etc, for years and in reading the language in this bill it really did not apply to patents. He asked **REP. HARPER**, it really applied just to trade secrets didn't it? **REP. HARPER** answered "yes". **SEN. EMERSON** stated there was another type of law that tied in with business trade secrets such as a situation in Dillon where a person was hired by an insurance company and he decided after about 3 years to go out and set up his own insurance company, so he took his Rol-O-Dex along and just started calling on customers that he had gotten from his training with the other insurance company. Does that bill deal with that type of scenario? **REP. HARPER** stated he did not believe this bill would help in that case. **SEN. EMERSON** stated he knows we have a law that was supposed to prevent that, but the law was very ineffectual. He had hoped that HB 454 would strengthen that law. **REP. HARPER** said he didn't think it dealt with any process, such as something one learned or gained from another corporation. That bill was intended mostly to deal with the trade secrets in terms of a product or an application, a program, something on that order. That law was implemented at the behest of soft-ware producers in the State of Montana.

SEN. GARY FORRESTER asked **REP. HARPER**, when he talked about soft-ware producers (this bill is mostly a computer bill) were the changes made for that purpose. On page 2, lines 1, 2 & 3, "In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty ....." when you have a Chinese manufacturer that had copied a Montana soft-ware program, how would any damage be imposed on that manufacturer? He isn't an American manufacturer that was infringing upon us in Montana, so how would this bill help with relief there? **REP. HARPER** said a tariff would have to be levied, or else go to war. He didn't know how else to help in that area.

SEN. FORRESTER stated that this bill would not provide injunctive relief. If a program was desired by a group of manufacturers and was available in Montana, but also available from a supplier in Canada (who had purchased it from a Canadian-Chinese supplier), how would that bill help that individual in Montana? **SEN. EMERSON** stated he would like to answer that question. If it was patented, which those things can be, patent infringement not only includes the manufacture, but also the distribution and sale, so the Chinese guy could steal the idea and he could sell it all over the rest of the world, but if he tried to sell it in the U.S. (if you can find that he is doing this) you could stop him because he had a distributor that can be nailed; he had someone selling it and likewise, that person could be nailed. That was the only protection from companies who do not recognize U.S. patents.

SEN. FORRESTER asked **REP. HARPER,** where satellite dish decoders were advertised (and that could be found in just about any magazine that would sell decoder chips for installation by a local authorized dealer), would a person be violating U.S. law that states you could not receive TV signals? Those were readily available and apparently 60% of the people were using that type of technology. Would this bill affect those people? **REP. HARPER** stated he believed it would, because that would be a trade secret. He looked at that language and saw in lieu of being able to measure damages in any other way, a reasonable royalty could be imposed under this Act. He assumed a royalty somehow could be imposed upon that and then a person could receive it if they were the actual holder of that invention. How that works legally, he was not sure. He assumed it would be through an inquisition of the tariff, because Montana did not have a sales tax and Montana didn't impose taxes on wholesalers. He was unsure of the mechanics, but this language was to give another way to be able to recover from misappropriations other than those that were currently in the law. That is why those amendments were added to at least broaden their power to be able to recover.

SEN. FORRESTER in Section 4, "With respect to a continuing misappropriation that began prior to this effective date, this Act did not apply to the continuing misappropriation that occurred after the effective date" did that mean if you were cheating before this Act, you can continue cheating after this Act and you couldn't get caught? **REP. HARPER** stated it meant there would undoubtedly be some actions that started before this Act was passed and if that act of misappropriations began before this Act was passed, and if the misappropriation continued after the Act was passed, the misappropriation would be governed by the laws existing at the time the misappropriation started. It would eventually sort itself out when all those cases were gone; however, this was just to make clear which Act was going to govern.

Closing by Sponsor:

REP. HARPER thought it was necessary to pass the bill to clean it up, make Montana on an equal par for protection of Montanans' secrets that sometimes have entire fortunes wrapped up and he expressed those were the types of jobs that Montana wanted to attract and wanted to hold as they were high paying, high tech jobs. He would ask the Committee to concur in HB 454. Also, **REP. HARPER** asked if the Committee saw favorably on this bill, would **SEN. EMERSON** carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 454

Motion: **SEN. EMERSON** made the motion HB 454 BE CONCURRED IN.

Discussion: **SEN. FORRESTER** stated he understood what the intent of the bill was, but he maintained, especially with computer secrets, China and several other southeast Asian countries seem to be bent on copying everything we had here and with the international market we were involved in, he was unsure this bill would be very effective.

SEN. MIKE SPRAGUE stated that nationally that had been addressed and there had been an embargo against Japanese products and the Clinton administration succeeded in out-bluffing them. They were attempting, as best they could with international relations, and "yes, this was an intent bill".

SEN. EMERSON declared he agreed with **SEN. FORRESTER** and he didn't think HB 454 was going to do much good, but if it did any good, we may as well pass it since it had come this far. It was true that around the world, they are trying to get a handle on the problem, but in order to do so, they must convince the individual countries and many countries were not cooperating at all.

Vote: The motion **HB 454 BE CONCURRED IN CARRIED** unanimously on oral vote.

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE

ROLL CALL DATE 3-10-95

NAME	PRESENT	ABSENT	EXCUSED
STEVE BENEDICT, VICE CHAIRMAN			✓
WILLIAM CRISMORE	✓		
CASEY EMERSON	✓		
GARY FORRESTER	✓		
TERRY KLAMPE	✓		
KEN MILLER			✓
MIKE SPRAGUE	✓		
BILL WILSON	✓		
JOHN HERTEL, CHAIRMAN	✓		

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SENATE STANDING COMMITTEE REPORT

March 10, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration HB 454 (third reading copy -- blue), respectfully report that HB 454 be concurred in.

Signed: John Hertel
Senator John R. Hertel, Chair

Amd. Coord.
Sec. of Senate

Sen. Casey Emerson
Senator Carrying Bill

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